

CAUSE NO. 236-262967-12

JESSICA BERG AND ROBERT BERG,

Plaintiffs,

v.

BANK OF AMERICA, N.A., AND
BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP.,

Defendants.

IN THE DISTRICT COURT

236th JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

THOMAS A.
DISTRICT CLERK
FILED COUNTY
TARRANT COUNTY
DEC 16 P 2:26
WESDER

DEFENDANT'S ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES

Defendant Bank of America, N.A., ("Defendant") files this its Original Answer, and Affirmative Defenses to Plaintiffs' First Amended Original Petition and Application for Temporary Restraining Order ("Amended Petition") and respectfully shows this Court the following:

I. GENERAL DENIAL

1. Defendant generally denies each and every claim, charge, and allegation contained in Plaintiffs' Amended Petition as well as any amendments and supplementations thereto, as provided by TEX. R. CIV. P. 92 and requests that the Court require Plaintiffs to prove their claims by a preponderance of the credible evidence.

II. AFFIRMATIVE DEFENSES

2. Some or all of Plaintiffs' claims are barred by the statute of frauds
3. Some or all of Plaintiffs' claims are barred by failure of consideration.
4. Plaintiffs' claims are barred in whole or in part because Plaintiffs have failed to state a claim upon which relief may be granted.
5. Plaintiffs have failed to meet certain conditions precedent including tender.
6. Some of all of Plaintiffs' claims are barred by the economic loss doctrine.

7. Some of all of Plaintiffs' claims are barred by their breach of obligations under the subject note and deed of trust and their failure to tender amounts due under the note.

8. Plaintiffs' claims are barred in whole or in part because Plaintiffs are unable to prove their alleged losses, damages, and/or injuries in accordance with Texas law.

9. Some or all of Plaintiffs' claims are barred due to lack of standing.

10. Defendant reserves the right to assert any additional affirmative defenses that may be discovered during the course of additional investigation and discovery

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiffs take nothing on their claims and for such other and further relief at law and in equity to which it may be entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
BANK OF AMERICA, N.A.**

CERTIFICATE OF SERVICE

I certify that on December 16, 2013, a true and correct copy of the foregoing was forwarded to counsel for Plaintiffs, as follows:

Via Facsimile
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Lorin M. Subar